

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 05CV11716-ML

KATHLEEN A. MARTIN
Plaintiff

V.

MERCK & CO., INC., DARTMOUTH-
HITCHCOCK MEDICAL CENTER,
DR. ROSHINI PINTO POWELL,
DR. CHARLES CARR, BRIGHAM
AND WOMEN'S HOSPITAL AND
DR. PETER J. MILLETT,
Defendants

ANSWER AND JURY CLAIM OF THE
DEFNDANT, DR. PETER J. MILLETT

DEFENDANT, PETER J. MILLETT, M.D.,
CLAIMS A TRIAL BY JURY AS TO ALL ISSUES

The defendant, Peter J. Millett, M.D., denies the allegations contained in the plaintiff's Complaint as summarized in the paragraph prior to the Introductory Paragraph No. 1.

First Defense

1. The defendant, Peter J. Millett, M.D., denies the allegations of Paragraph No. 1 of the plaintiff's Complaint.
2. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the first two sentences of allegations of Paragraph No. 2 of the plaintiff's Complaint because he is without knowledge or information at this time sufficient to form a belief as to the truth said allegations. The defendant, Peter J. Millett, M.D. admits that at all relevant times had privileges at Brigham and Women's Hospital and denies the remainder of the plaintiff's allegations of Paragraph No. 2 of the plaintiff's Complaint.

3. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph No. 3 of the plaintiff's Complaint because he is without knowledge or information at this time sufficient to form a belief as to the truth of said allegation.
4. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 4 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
5. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 5 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
6. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 6 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
7. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 7 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
8. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 8 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
9. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 9 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.

10. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 10 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
11. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 11 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
12. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 12 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
13. The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph No. 13 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
14. The defendant, Peter J. Millett, M.D., admits that at all relevant times, he was a physician licensed to practice in the Commonwealth of Massachusetts and had privileges at Brigham and Women's Hospital, but otherwise denies, as phrased, the allegations contained in Paragraph No. 14 of the plaintiff's Complaint.
- 15-57 The defendant, Peter J. Millett, M.D., neither admits nor denies at this time the allegations of Paragraph Nos. 15 through 56 of the plaintiff's Complaint because he is without knowledge of information sufficient to form a belief as to the truth of said allegation.
58. The defendant, Peter J. Millett, M.D. denies the allegations of Paragraph 58 of plaintiff Complaint.

COUNT I

59. The defendant, Peter J. Millett, M.D., repeats and restates each of his responses and/or denials to Paragraph Nos. 1 through 58, above, as though specifically set forth herein.

60-65 The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph Nos. 60 through 65 of Count I of plaintiff's Complaint as they do not appear to contain allegations against said defendant. To the extent, if any, that said paragraphs are intended to contain allegations against said defendant, the allegations are denied.

COUNT II

66. The defendant, Peter J. Millett, M.D., repeats and restates each of his responses and/or denials to the aforementioned Paragraphs as though specifically set forth herein.

67. The defendant, Peter J. Millett, M.D., denies the allegations of Paragraph No. 67 of the plaintiff's Complaint.

68. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph No. 68 of Count II of plaintiff's Complaint as it does not appear to contain allegations against said defendant. To the extent, if any, that said paragraph is intended to contain allegations against said defendant, the allegations are denied.

69. The defendant, Peter J. Millett, M.D., denies the allegations of Paragraph No. 69 of Count II of plaintiff's Complaint.

70. The defendant, Peter J. Millett, M.D., denies the allegations of Paragraph No. 70 of Count II of plaintiff's Complaint.

71. The defendant, Peter J. Millett, M.D., denies the allegations of Paragraph No. 71 of Count II of plaintiff's Complaint.

72. The defendant, Peter J. Millett, M.D., denies the allegations of Paragraph No. 72 of Count II of plaintiff's Complaint.

WHEREFORE, the defendant, Peter J. Millett, M.D., prays that Count II of the plaintiff's Complaint be dismissed or in the alternative that a finding enter in favor of said defendant.

COUNT III

73-76. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph Nos. 73 through 76 of Count III of plaintiff's Complaint as they do not appear to contain allegations against said defendant. To the extent, if any, that said paragraphs are intended to contain allegations against said defendant, the allegations are denied.

COUNT IV

77-78. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph Nos. 77 through 78 of Count IV of plaintiff's Complaint as they do not appear to contain allegations against said defendant. To the extent, if any, that said paragraphs are intended to contain allegations against said defendant, the allegations are denied.

COUNT V

83-88. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph Nos. 83 through 88 of Count V of plaintiff's Complaint as they do not appear to contain allegations against said defendant. To the extent, if any, that said paragraphs are intended to contain allegations against said defendant, the allegations are denied.

COUNT VI

89-91. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph Nos. 89 through 91 of Count VI of plaintiff's Complaint as they do not appear

to contain allegations against said defendant. To the extent, if any, that said paragraph are intended to contain allegations against said defendant, the allegations are denied.

COUNT VII

93. The defendant, Peter J. Millett, M.D., repeats and restates each of his responses and/o denials to the aforementioned Paragraphs as though specifically set forth herein.

94. The defendant, Peter J. Millett, M.D., admits that at all relevant times, he was a physician licensed to practice in the Commonwealth of Massachusetts.

95. The defendant, Peter J. Millett, M.D., neither admits nor denies the allegations of Paragraph No. 95 of the plaintiff's Complaint because he is without knowledge or information at this time sufficient to form a belief as to the truth of said allegation.

96. The defendant, Peter J. Millett, M.D, denies the allegations of Paragraph No. 96 of the plaintiff's Complaint.

97. The defendant, Peter J. Millett, M.D, denies the allegations of Paragraph No. 97 of the plaintiff's Complaint.

98. The defendant, Peter J. Millett, M.D, denies the allegations of Paragraph No. 98 of the plaintiff's Complaint.

WHEREFORE, the defendant, Peter J. Millett, M.D., prays that Count VII of the plaintiff's Complaint be dismissed or in the alternative that a finding enter in favor of said defendant.

PRAYERS FOR RELIEF

The defendant, Peter J. Millett, M.D., requests this Honorable Court to deny all of the plaintiff's demands for relief, that the plaintiff's Complaint be dismissed with prejudice and the costs and attorney's fees be awarded to the defendant.

Second Defense

And further answering, the defendant says that the injuries and damages alleged were caused by the acts of any person for whose conduct the defendant was legally responsible.

Third Defense

And further answering, the defendant says that the plaintiff fails to allege a claim upon which relief can be granted. Wherefore, the defendant moves pursuant to Fed. R. Civ. P. 12(b)(6) that plaintiff's Complaint be dismissed, with costs to said defendant.

Fourth Defense

And further answering, the defendant says that the injuries and damages alleged were caused in whole or in part by negligence of the plaintiff to a degree greater than any alleged negligence of the defendant.

Fifth Defense

And further answering, the defendant says that the plaintiff's Complaint in the above action fails for insufficiency of process and insufficiency of service of process upon the defendant in accordance with the applicable provisions of law. Wherefore, the defendant moves that this Complaint be dismissed under the provisions of Fed. R. Civ. P. 12(b)(4) and 12(b)(5) due to the insufficiency of process and insufficiency of service of process.

Sixth Defense

And further answering, the defendant says that any recovery for past and future medical expenses and/or for alleged conscious pain and suffering, if any, is limited pursuant to the provision of G.L. c. 231, §§60G and 60H.

Seventh Defense

And further answering, the defendant says that the injuries and damages alleged were caused by the acts of any person for whose conduct the defendant was legally responsible.

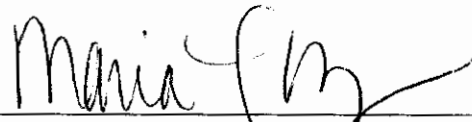
Eighth Defense

And further answering, the defendant says that this action was not commenced within time prescribed by the applicable statutes of limitations/statute of repose.

Ninth Defense

And further answering, the defendant says that there is incomplete diversity of citizens and this Court lacks subject matter jurisdiction pursuant to 28 USC § 1332.

WHEREFORE, the defendant, Peter J. Millett, M.D., demands that the plaintiff's Complaint be dismissed and that judgment enter in favor of the defendant together with costs.



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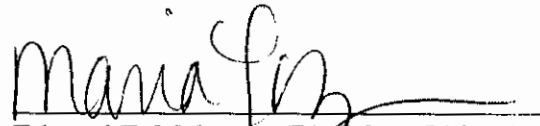
CERTIFICATE OF SERVICE

I, Maria L. Mazur, counsel for defendant, Peter J. Millett, M.D, hereby certify that on 13th day of September, 2005, I served the foregoing by mailing a copy thereof, postage prepaid to:

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